



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 582**

IN THE MATTER OF DAVID ELLIS

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and David Ellis ("Ellis") enter into this Disposition Agreement pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j). On February 10, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Ellis. The Commission concluded that inquiry, and on December 16, 1998, found reasonable cause to believe that Ellis violated G.L. c. 268A, §§23(b)(2) and 23(b)(3).

The Commission and Ellis now agree to the following findings of fact and conclusions of law:

1. From January 1994 until the present, Ellis has served as a ward councilor on the City Council ("the Council") in the City of Lynn. As such, he is a municipal employee within the meaning of G.L. c. 268A, §1 of the conflict of interest law.

2. The Council serves as the licensing authority in Lynn. As such, it has the ability to issue, suspend and revoke business licenses.

3. Commercial Auto Body is an auto body repair shop in Lynn, located at 165 Commercial Street. Commercial Auto Body is owned and operated by Emilio Rosario ("Rosario").

4. Commercial Auto Body is in Ellis' ward.

5. As a city councillor Ellis would occasionally conduct site visits at Commercial Auto Body.

6. At the November 12, 1996 Council meeting, Ellis requested a public hearing to show cause why Commercial Auto Body's license should not be revoked.^{1/} The reason for the revocation according to Ellis, was that Rosario was not complying with certain parking restrictions.

7. On December 17, 1996, the Council held a hearing concerning Commercial Auto Body's license. Rosario and his attorney appeared to represent Commercial Auto Body. No one appeared to make a case for closing Rosario down. Ellis moved to table the action against Rosario on the condition that Rosario agree not to park vehicles on Commercial Street, not do

any auto repair work on the sidewalk and post "No Parking" signs on Commercial Street. The vote to table was 10 yes and 1 no with Ellis voting in favor of the motion.

8. In 1997, Ellis was running for re-election as the ward councilor. The election was to be in September 1997. Ellis' opponent in the election was Peter Capano ("Capano").

9. Sometime in early August 1997, Ellis approached Rosario and asked if he could place his campaign signs on Rosario's Commercial Auto Body property. Rosario agreed and three days later, Ellis put up four of his campaign signs on the side of Rosario's building.

10. Shortly thereafter, Capano came to Rosario's shop and asked if he could put up some of his campaign signs on that same building. Rosario wanted to remain neutral and therefore agreed to also let Capano put up his campaign signs. Capano put up his campaign signs next to Ellis' campaign signs on Rosario's building.

11. Shortly thereafter, Ellis went to Commercial Auto Body and began tearing down Capano's campaign signs. Rosario asked Ellis what he was doing. Ellis asked Rosario who he was supporting in the campaign; either him (Ellis) or his opponent (Capano). Rosario stated that he just wanted to run his business and that he did not care who put signs on his building. Ellis told Rosario that he was the city councilor for that ward and that one of the cars parked in front of Rosario's business was parked illegally and he (Ellis) could have the car towed. Rosario then told Ellis he could take down Capano's signs. As Ellis proceeded to take down his opponent's signs, Ellis reminded Rosario of the December 1996 incident involving Rosario's license to operate and indicated to Rosario that he (Ellis) had assisted him in resolving that matter.

12. Rosario feared retaliation from Ellis if he did not allow Ellis to remove the signs.

13. Ellis asserts that he did not intend for his comments to cause Rosario to fear retaliation. Ellis now understands how his statements could have been so interpreted by Rosario, although he did not mean for this to occur.

14. Section 23(b)(2) G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

15. Ellis' exploiting as an elected public official his official regulatory power to, in effect, coerce Rosario to take down Ellis' opponent's campaign signs was a use by Ellis of his official city councilor position.

16. Ellis' use of his official position to effect the removal of his opponent's campaign signs in a political election was an unwarranted privilege.

17. The use of signs in a political campaign as described above is of "substantial value."^{2/} The same observation would seem to apply to such campaign signs placed on the walls of small businesses for public view. Accordingly, a public official's use of his official position to effect the removal of his opponent's campaign signs is an unwarranted privilege of substantial value.

18. The unwarranted privilege which Ellis obtained for himself was not available to “similarly situated individuals.”

19. Thus, by using his position as a city councilor to get Rosario to take down his opponent's campaign signs, Ellis knowingly or with reason to know used his councilor position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of §23(b)(2).

In view of the foregoing violation of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Ellis:

(1) that Ellis pay to the Commission the sum of five hundred dollars (\$500.00) as a civil penalty for the violation of G.L. c. 268A, §§23(b)(2); and

(2) that Ellis waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: March 16, 1999

^{1/}As a ward councilor, Ellis could request a hearing to revoke a business license in his ward at any time. A majority Council vote is necessary to revoke a business license.

^{2/}A campaign sign advocating the election of a certain candidate posted in public view potentially increases the likelihood that that candidate will be elected. Similarly, the lack of such campaign signs backing the candidate's opponent is of benefit to that candidate. Consequently, in the Commission's view, such postings (or the prevention of such postings by an opponent) involve items of substantial intangible value within the meaning of §23(b)(2). As the Supreme Court said in *In City of Ladue v. Gilleo*, 114 S.Ct. 2038, 2045 (1994), as to residential signs in political campaigns:

[S]mall [political campaign] posters have maximum effect when they go up in the windows of homes, for this demonstrates that citizens of the district are supporting your candidate - an impact that money can't buy. [fn. 12, p. 2045 citing D. Simpson, *Winning Elections: A Handbook in Participatory Politics* 87 (rev. ed. 1981).

The same observation would seem to apply to such campaign signs placed on the walls of small businesses for public view.